

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CYMEYON HILL,

Plaintiff,

v.

McGEFFEN, et al.,

Defendants.

No. 2:20-cv-1422-KJM-EFB P

CYMEYON HILL,

Plaintiff,

v.

CDCR, et al.,

Defendants.

No. 2:20-cv-1425-KJM-EFB P

ORDER

Plaintiff, a state prisoner proceeding without counsel in these two related actions brought pursuant to 42 U.S.C. § 1983, has filed applications to proceed in forma pauperis. ECF Nos. 2, 4.<sup>1</sup>

I. Background and Consolidation of Actions

Plaintiff filed these two actions on the same day. Both concern an incident on April 20, 2019, when plaintiff allegedly told defendant Dr. McGeffen that he wanted to commit suicide.

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<sup>1</sup> These proceedings were referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

1 According to the complaint in Case No. 20-cv-1422, McGeffen refused to put plaintiff under  
2 medical supervision, kept plaintiff in a holding cage, and “cleared plaintiff” (presumably to be  
3 released to his normal housing). Defendant Blanco, a mental health triage staff person, then  
4 authorized “AOD” to have plaintiff remain in the holding cage all night in order to punish  
5 plaintiff. Plaintiff allegedly was left in the holding cage for 21 hours, in restraints, with no  
6 medical supervision. While the body of the complaint contains no factual allegations showing  
7 what defendants Lujan and Freriks did, attachments to the complaint reveal that these individuals  
8 were the officers in charge of supervising the holding cage in which plaintiff was kept and that  
9 they kept him in the cage at the direction of Blanco. Plaintiff suffered injuries, including some  
10 physical injuries caused by the leg and wrist restraints that were placed on plaintiff in the holding  
11 cage. Plaintiff alleges that defendants McGeffen, Blanco, Lujan, and Freriks were deliberately  
12 indifferent to his serious medical needs and subjected him to cruel conditions of confinement in  
13 violation of the Eighth Amendment.

14 Case No. 20-cv-1425 concerns the same facts, but plaintiff asserts his Eighth Amendment  
15 claim against different defendants – the California Department of Corrections (“CDCR”)  
16 Department of State Hospitals, CDCR Healthcare Services, CDCR Departmental Review Board,  
17 and California State Prison, Sacramento (“CSP-Sac”). It’s not clear why plaintiff filed his claims  
18 in two separate actions; perhaps he thought he could not sue the agency defendants and individual  
19 defendants in the same case. As the cases clearly concern “common questions of law or fact,” the  
20 court orders that the two cases be consolidated pursuant to Federal Rule of Civil Procedure 42(a)  
21 under Case No. 20-cv-1422-KJM-EFB.

22 II. Request to Proceed In Forma Pauperis

23 Because the court is ordering the actions consolidated under Case No. 20-cv-1422-KJM-  
24 EFB, plaintiff’s motion to proceed in forma pauperis in Case No. 20-cv-1425 is unnecessary and  
25 will be denied as moot. Plaintiff’s application in Case No. 20-cv-1422 makes the showing  
26 required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the  
27 agency having custody of plaintiff to collect and forward the appropriate monthly payments for  
28 the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

1     III.     Screening Requirement and Standards

2             Federal courts must engage in a preliminary screening of cases in which prisoners seek  
3     redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
4     § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
5     of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
6     relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
7     relief.” *Id.* § 1915A(b).

8             A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
9     of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
10    plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
11    defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
12    *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
13    While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
14    its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
15    U.S. 662, 679 (2009).

16            To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
17    assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
18    action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
19    a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
20    678.

21            Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
22    *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
23    content that allows the court to draw the reasonable inference that the defendant is liable for the  
24    misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a  
25    claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
26    *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the  
27    plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

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1 IV. Analysis

2 Liberally construed, and for the limited purposes of screening under § 1915A, plaintiff has  
3 stated potentially cognizable Eighth Amendment claims against defendants McGeffen, Blanco,  
4 Lujan, and Freriks.

5 Plaintiff has not stated a cognizable claim against the CDCR defendants or CSP-Sac.  
6 Section 1983 provides a cause of action against “[e]very person who, under color of [state law]  
7 subjects, or causes to be subjected, any citizen of the United States or other person within the  
8 jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the  
9 Constitution” or other federal law. States and state agencies are not “persons” within the meaning  
10 of the statute and are entitled to immunity under the 11th Amendment. *Gilbreath v. Cutter*  
11 *Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) (citing *Will v. Dep’t of State Police*, 491  
12 U.S. 58 (1989) and *Mt. Healthy City School Dist. Bd. Of Educ. v. Doyle*, 429 U.S. 274 (1977)).  
13 Accordingly, plaintiff’s constitutional claims against various divisions of CDCR and CSP-Sac  
14 fail. *Id.*, *Allison v. Cal. Adult. Auth.*, 419 F.2d 822, 823 (9th Cir. 1969); *Thompson v. City of*  
15 *Honolulu*, No. 17-00002 JMS/KSC, 2017 U.S. Dist. LEXIS 7110, at \*7 (D. Haw. Jan 18, 2017).

16 Plaintiff may choose to proceed only with his deliberate indifference claims against  
17 defendants McGeffen, Blanco, Lujan, and Freriks. Alternatively, he may choose to amend his  
18 complaint again to state (if he can) a cognizable claim against the other defendants.

19 He is cautioned that any amended complaint must identify as a defendant only persons  
20 who personally participated in a substantial way in depriving him of his constitutional rights.  
21 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation  
22 of a constitutional right if he does an act, participates in another’s act or omits to perform an act  
23 he is legally required to do that causes the alleged deprivation). Plaintiff may also include any  
24 allegations based on state law that are so closely to his federal allegations that “the form the same  
25 case or controversy.” *See* 28 U.S.C. § 1367(a).

26 The amended complaint must also contain a caption including the names of all defendants.  
27 Fed. R. Civ. P. 10(a).

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1 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*  
 2 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Nor may he bring multiple, unrelated claims  
 3 against more than one defendant. *Id.*

4 Any amended complaint must be written or typed so that it is complete in itself without  
 5 reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
 6 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
 7 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
 8 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
 9 being treated thereafter as non-existent.”) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
 10 1967)).

11 Any amended complaint should be as concise as possible in fulfilling the above  
 12 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual  
 13 background which has no bearing on his legal claims. He should also take pains to ensure that his  
 14 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing  
 15 and organization. Plaintiff should carefully consider whether each of the defendants he names  
 16 actually had involvement in the constitutional violations he alleges. A “scattershot” approach in  
 17 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

#### 18 **V. Order**

19 Accordingly, it is ORDERED that:

- 20 1. Case Nos. 2:20-cv-1422-KJM-EFB and 2:20-cv-1425-KJM-EFB are hereby  
 21 CONSOLIDATED pursuant to Fed. R. Civ. P. 42.
- 22 2. Case No. 2:20-cv-1422-KJM-EFB is designated as the “master file.”
- 23 3. The Clerk is directed to administratively close and terminate any pending motions  
 24 in Case No. 2:20-cv-1425-KJM-EFB.
- 25 4. The parties are directed to file all future pleadings ONLY in Case No: 2:20-cv-  
 26 1422-KJM-EFB.
- 27 5. Plaintiff’s motion to proceed in forma pauperis in Case No. 2:20-cv-1422-KJM-  
 28 EFB (ECF No. 2) is granted.


1           6.     Plaintiff's complaint alleges, for screening purposes, viable Eighth Amendment  
2           claims against defendants McGeffen, Blanco, Lujan, and Freriks.

3           7.     All other claims are dismissed with leave to amend within 30 days from the date  
4           of service of this order. Plaintiff is not obligated to amend his complaint.

5           8.     Within thirty days plaintiff shall return the notice below advising the court whether  
6           he elects to proceed with the cognizable claims or file an amended complaint. If  
7           the former option is selected and returned, the court will enter an order directing  
8           service at that time;

9           9.     Failure to comply with any part of this this order may result in dismissal of this  
10          action.

11     DATED: September 29, 2020.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CYMEYON HILL,

Plaintiff,

v.

McGEFFEN, et al.,

Defendants.

No. 2:20-cv-1422-KJM-EFB P

NOTICE OF SUBMISSION OF  
DOCUMENTS

In accordance with the court's Screening Order, plaintiff hereby elects to:

(1) \_\_\_\_\_ proceed only with Eighth Amendment claims against defendants  
McGeffen, Blanco, Lujan, and Freriks;

OR

(2) \_\_\_\_\_ delay serving any defendant and file an amended complaint.

\_\_\_\_\_  
Plaintiff

Dated: